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IN THE

Supreme Court of the United States
October Term, 1979

No. 79-1084

W. J. ESTELLE, JR., DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS
Petitioner,

v.

JULIUS CORPUS, ET AL.,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF AMICUS CURIAE BY THE STATE OF GEORGIA IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

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TEXAS DEPARTMENT OF CORRECTIONS,

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FOR THE FIFTH CIRCUIT

BRIEF AMICUS CURIAE BY THE STATE OF GEORGIA
IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED

Does an award of attorney's fees for services rendered prior to the effective date of the Attorney's Fees Act, 42 U.S.C. § 1988,

to be paid from the treasury of a State violate the State's immunity under the Eleventh Amendment?

REASONS FOR GRANTING THE WRIT

In Edleman v. Jordan, 415 U.S. 651, 678 (1974), this Court held that the Eleventh Amendment barred the District Court's ordering the State of Illinois to pay retroactively disability benefits wrongfully withheld. Congress does have the power to have an amended class of costs apply to the States without expressly stating that Congress intends to abrogate the States' Eleventh Amendment immunity, Hutto v. Finney, 437 U.S. 678, 696 (1978); and this Court has concluded that the States are not immune from attorney's fees awards. Id. at 695, 698, n. 31.

Although in Hutto there was a brief comment concerning the retroactive award of attorney's fees, id. at 695, n. 24, this Court in its holding in that case did not have to reach the issue as to whether the retroactive application of the Attorney's Fees Act, 42 U.S.C. § 1988, violates the States' immunity under the Eleventh Amendment.

Moreover, as the petition for writ of certiorari states, the rationale for the Attorney's Fees Act is to induce attorneys to file cases which otherwise might never have been brought. Clearly, this rationale is applicable only to lawsuits filed after the Attorney's Fees Act became effective.

The State of Georgia supports the contention of the State of Texas that an award of attorney's fees for services rendered prior to the effective date of the Attorney's Fees Act, 42 U.S.C. § 1988, to be paid from a State treasury violates the State's immunity under the Eleventh Amendment. The State of Georgia respectfully prays that this Court grant the writ of certiorari petitioned for by the State of Texas in the above case and set the case down for oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Harrison Kohler, a member of the Bar of the Supreme Court of the United States, certify that in accordance with the rules of this Court, I have this day served a true and correct copy of this Brief Amicus Curiae upon the Petitioner and Respondent by depositing a copy of the brief in the United States mail, with proper address and adequate postage to:

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This 8th day of February, 1980.

Harrison Kohler
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